Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

JOSEPH AMOIA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent,

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit**

PETITION FOR WRIT OF CERTIORARI

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December 7, 1999

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QUESTIONS PRESENTED

(1) Does the conviction herein violate the Federal standards regarding sufficiency of the evidence on the basis that the evidence failed to establish the element of a conspiracy, which is necessary to support the conviction?

(2) Can the U.S. Attorney under false pretenses submit to the grand jury a specific date for an indictment and then allege another date during trial?

(3) Did the government violated 18 U.S.C. §201(c) during trial?

(4) Did petitioner receive a fair and impartial trial, a Sixth Amendment Right by the government's usage of witnesses who's credibility was zero, and were promised immunity and lesser sentences for murder, extortion and racketeering?

(5) Did petitioner receive the full scope of equal protection and due process of law during trial?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, JOSEPH AMORIA, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit holding that the evidence was sufficient that the conspiracy and evidence strongly supported petitioner's conviction.

OPINION BELOW

The opinion of the Court of Appeals, Second Circuit, is unpublished but appears in Appendix A to this petition as #98-1649, August 6, 1999.

The opinion of the United States District Court, is unpublished but appears in Appendix B to this petition as #1:92CR00113-009.

JURISDICTION

The Court of Appeals' opinion in this matter was filed on August 6, 1999. This Court's jurisdiction is invoked under Title 28 U.S.C. §1254(1), and pursuant to the U.S. Supreme Court Rule 10.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions of the Fifth, Sixth and Fourteenth

Amendments of the United States Constitution are involved to the extent that the decision of the Second Circuit Court of Appeal has misconstrued and misinterpreted these provisions, thereby allowing a conviction on evidence insufficient to a show nexus between Petitioner's alleged acts and involvement on the conspiracy with intent to distributing cocaine. Whether the government violated 18 U.S.C. §201(c), and under false pretenses mislead the grand jury of a specific date for an indictment, then allege another date at trial.

STATEMENT OF FACT

The United States District Court, Western District of New York, had jurisdiction pursuant to 18 U.S.C. §3231. The United States Court of Appeals, Second Circuit, had jurisdiction pursuant to 28 U.S.C. §1291.

The grand jury filed a one-count superseding indictment on October 14, 1994, charging Joseph Amoia and nine others with conspiracy "to distribute five kilograms or more of a mixture of substance containing cocaine", in violation of 21 U.S.C. §846.

The 1994 indictment superseded a May 8, 1992 indictment that had charged seven other individuals. In the May 18, 1992 indictment, Joseph Amoia was not named.

During the course of the pre-trial litigation by the defendants named in the 1994 indictment, the government filed an extensive bill of particulars.

On June 6, 1995, petitioner Amoia and six of the co-defendants filed a set of joint omnibus pre-trial motions seeking, in pertinent part, a bill of particulars "to establish that the prosecution was commenced in a timely fashion".

On June 28, 1995, the government filed its response to the joint omnibus pre-trial motions. In responding to the motion for the bill of particulars, the government provided names of 58 known co-conspirators and that the "unknown" co-conspirators were "Hispanci" individuals who traveled with Jose DeCastro, to and from Buffalo, in the Queens, New York area and the Albany, New York area, and other Florida-based suppliers.

In the omnibus pre-trial motions, it was moved to dismiss the indictment, claiming "if there ever was a conspiracy as described in the indictment, that the conspiracy terminated more than five years before the commencement of the present proceedings against the defendants before the United States District Court".

The government verbally made a contract with Michael Graziadei, Sam Lauricella, Peter Cammilleri, Dino Miosi, Andrew Novino, Carmen Intorre, to testify against petitioner Amoia, in exchanged for immunity, for their testimony implicating petitioner Amoia. The government witnesses were known felonies [murders, distributors in trafficking with drugs], and some were incarcerated within the State Penal System at this particular time period. The only proof offered by the

Government were these witnesses and there was no factual evidence to substantiate their testimony. Peter Cammilleri was an FBI informant who wore a body recorder. Yet there was no recorded evidence produced by the government of petitioner Amoia's voice, nor a recording of a conspiracy that included petitioner Amoia's involvement, knowledge or agreement. There are two essential elements needed that must be proven, motive and opportunity. "Not motive or opportunity, but motive and opportunity". In law, they are Siamese twins-inseparable.

The government made promises to Michael Graziadei, Sam Lauricella, Peter Cammilleri, Thomas Northrup, Andrew Novino. The government promised to move for a downward adjustment, (1) in return for their testimony in the instant case, immunity; (2) the promise of immunity for certain offenses held in abeyance [State or Federal Judicial System].

Petitioner Amoia openly admitted via an affidavit "that he was involved with less than two kilograms of cocaine. Petitioner was found guilty by a jury and on November 2, 1998, the court sentenced petitioner Amoia to 170 months in the custody of the Bureau of Prisons, followed by five years of supervised released, and was ordered to pay $50.00 special penalty assessment.

From said sentence, petitioner Joseph Amoia perfected direct appeal to the U.S. Court of Appeals, Second Circuit. The Court of Appeals affirmed the

conviction on August 6, 1999.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the reason that the Government violated 18 U.S.C. §201(c), based on perjures testimony of government witnesses.

One of the oldest principles of our legal heritage is that the king is subject to the law. See Roman 13. King John was taught this principle at Runnymede in A.D. 1215, when his barons forced him to submit to Magna Carta, the great charter that imposed limits on the exercise of sovereign power. See William Sharp McKechnie, Magna Carta, 36-42 (1914). One of the first modern expositions of this hallowed principles is found in Lex, Rex[1/], whose title indicated the fundamental shift in our legal heritage towards the primacy of the law and the subordinale position of the King.

Justice Bravdeis expounded on the principles:

> "Decency, security and liberty alike demands that government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of law, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a

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1/ Samuel Rutherford, Lex, Rex, or The Law and the Prince (1644)(Sprinkle Publication 1982).

> lawbreaker, it breeds contempt for law, it invites every man to become a law unto himself, it invites anarchy".

To declare that in the administration of the criminal law the end justifies the means - to declare that the Government may commit crimes in order to secure the conviction of a private criminal - would being terrible retribution.

The United States Attorney(s) are the representation not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, (s)he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilty shall not escape nor innocent suffer.

The conduct of the Government in this case is so reprehensible, so lacking in moral compass, that it nearly defies rational analysis. Before this case, it would have been inconceivable that our government would enter into a mutual assistance agreement with criminals. Yet the United States Attorney's Office contracted with Michael Graziadei and Sam lauricella as "dynamite" witnesses to be used against petitioner Joseph Amoia.

The government well understood the nature and consequences of their acts, and they had no reservation about entering.

The government failed to grasp the damage that it did when it made this deal with the devil. The agreement for immunity the government contracted with witnesses, is a moral implications of its unholy alliance. And surely its lack of moral concern both then and now, had far-reaching consequences. The matters that has come before this Court in this proceeding does not merely raise philosophical questions, they raise critical legal questions implicating the very legitimacy of our system of justice.

When the government contracted with the witnesses for a "dynamite witness" it became responsible for the reasonable and forseeable actions taken by its new partner in fulfilling the obligations under that contract. Again, putting aside the morality of such an alliance, the United States in a very practical and legal sense took on the risk of becoming an accessory to criminal activity. In the best case scenario, the United States is only responsible for the bribes paid to witnesses.

The judicial process is tainted and justice cheapened when factual testimony is purchased, whether with leniency or money. Because the government bear a weighty responsibility to do justice and observe the law in the course of their actions. The government is guilty of perverting the criminal justice system. If the government can contract with criminals for evidence, there will never be any way to ensure the reliability of

the truth-seeking function. Witness intimidation and bribery will become rampant.

Section 201(c)(2) could not be more clear. It says in part:

> Whoever . . . directly or indirectly, gives, offers or promises anything of value to any person for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing or other proceedings, before any court . . . authorized by the laws of the United States to hear evidence or take testimony . . .

That §201 was noted to be broadly construed to further its legislative purpose of deterring corruption. See United States v Hermandez, 731 F.2d 1147, 1149 (5th Cir. 1984); United States v Evans, 572 F.2d 455, 480 (5th Cir.), cert. denied, 439 U.S. 870; 99 S. Ct. 200; 58 L. Ed 2d 182 (1978).

There are no limits of class of persons who can violate the statute. "Whoever" completes the following elements commits a crime. First, the statute requires a gift, offer, or promise, either direct or indirect, to a person. Second, the gift, offer, or promise must be "of value." Third, the gift, offer, or promise must be made "for" or "because of" the person's sworn testimony at a trial or other proceedings before an authorized court. The state of mind required to violate the statute is knowledge that the thing of value is given for or because of testimony. See United States v Campbell, 684 F.2d 141, 150 (D.C. Cir. 1982); United States v Brewster, 506 F.2d 62, 82 (D.C. Cir. 1974)(quoting

United States v Brewster, 408 U.S. 501, 527; 92 S. Ct. 253; 33 L. Ed 2d 507 (1972).

Section 201(c)(2) applies to federal prosecutors who make promises for or because of testimony on behalf of the government.

The Assistant United States Attorney Anthony Bruce made at least three promises to Michael Graziadei and Sam Lauricella as well as other co-conspirators. Relying for analysis only on the three promises specifically made in the plea agreement: (1) the promise not to prosecute co-conspirators for certain offenses, with immunity, (2) the promise to inform New York authorities of their cooperation, and (3) the promise to inform the district court of their cooperation. These promises were made "for" their testimony. Mr. Graziadei, Mr. Lauricella and other co-conspirators promised to testify "in consideration of" the three promises.

The record indicates the testimony and the promises mutually induced one another, a relation stronger than the "for or because of" required by §201(c)(2). See United States v Sun-Diamond Growers, 138 F.3d 961, 966 (D.C. Cir. 1998)(construing parallel language in §201(c)(1)(A).

The Supreme Court's more recent words are instructive as well: "No rule of construction . . . requires that a penal statute be strained and distorted in order to exclude conduct clearly intended to be within the scope . . ." See Salinas v United States,

____U.S. ____; 118 S. Ct. 469, 475; 139 L. Ed 2d 352 (1997)(citing United States v Raynor, 302 U.S. 540, 552; 58 S. Ct. 353; 82 L. Ed 413 (1938).2/

There is no case in which prosecutors, in their role as lawyers representing the government, have been granted a justification to violate generally applicable laws. See United States v Ryans, 903 F.2d 731, 739-40 (10th Cir.), cert. denied, 498 U.S. 855; 111 S. Ct. 152; 112 L. Ed 2d 118 (1990).

The chasm between the government's conduct and reasonable law enforcement actions can be illustrated by analogy to the FBI's Abscam Operation, under which operatives and undercover agents offered bribes to Public Officials and arrested those who accepted the bribe.

The government's statutory violation unreasonably exceeds this purpose, and is the more egregious because the intended product of the violation is testimony presented in court.

The Supreme Court has reiterated, the prevailing rule that "a federal official may not with impunity ignore the limitation which the controlling law has placed on his power." Butz v Economou, 438 U.S. 478, 489; 98 S. Ct. 2894; 57 L. Ed 2d 895 (1978).

2/ The argument that §201(c)(2) applies to government inducements for testimony appears first to have been made in an article by a former Government Prosecutor. See: J. Richard Johnston, Paying the Witness; Why is it Okay for the Prosecution, but Not the Defense. 12 WIR Crim. Just. 21 (1997).

In the case of Giglio v United States, 405 U.S. 150; 92 S. Ct. 763; 31 L. Ed 2d 104 (1972), it indicated that suppression was not an appropriate remedy when the government promises leniency to a witness in return for testimony. See Isaacs, 347 F. Supp. at 767. Giglio held the government must disclose a promise of leniency made to a key witness in return for testimony.

Petitioner Amoia contends (1) that the AUSA's promise to all the co-conspirators was attributable to the government; (2) evidence of the agreement or understanding was relevant to the co-conspirator's credibility; and (3) the non-disclosure of this evidence affecting the co-conspirator's credibility violated due process and justifies a new trial, irrespective of the government's good faith or bad faith.3/

Petitioner Amoia challenges his conviction, claiming that the Government violated its obligation to disclose certain so-called Brady material, i.e. impeachment evidence relating to its witnesses. As part of their plea agreements, the prosecutor agreed to dismiss felonies and granting immunity. See United

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3/ 21 Am Jur 2d, Criminal Law §225; U.S. E. Ed Digest, Constitutional Law §840; ALR Digest, Constitutional Law §669.5 & Criminal Law §110; ALR Quick Index, Suppression of Evidence or Facts; Federal Quick Index, Suppression of Evidence. See also, Conviction on testimony known to prosecution to perjured as denial of due process, 2 L. Ed 2d 1575; 3 L. Ed 2d 1991; 98 ALR 411.

States v Smith, 77 F.3d 511 (D.C. Cir. 1996).

The Supreme Court has recently made clear that, in the context of a prosecutor's duty to disclose, materiality is not gauged by a sufficiency of the evident test. Kyles v Whitley, 131 L. Ed 2d 490; 115 S. Ct. 1555 (1995). Under Kyles, it makes no difference whether the testimony of other witnesses might have been sufficient to convict petitioner Amoia. And it makes no difference that other aspects of witnesses plea agreement were disclosed to the defense or that defense counsel was able to impeach the witnesses on other grounds. In short, "a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the petitioner's acquittal." Rather, the question is whether, in light of the absence of the suppressed evidence, did petitioner Amoia "receive a fair trial, understood as a trial resulting in a verdict worthy of confidence."

The prosecution had/has a affirmative duty to disclose material evidence favorable to petitioner Amoia. Further, it is well-settled that this disclosure obligation includes evidence that could be used to impeach the credibility of a witness. Giglio, supra. In this case, it is undisputed that the Government failed to disclose information that could have been used to impeach witnesses. The prosecutor's obligation to disclose material information to the

defense is a fundamental component of the guarantee that petitioner Amoia receive a fair trial. Thus, it does not lightly excuse Brady violations. Because the Government's non-disclosures in this case significantly impaired defense counsel's ability to impeach the credibility of principle witnesses used by the prosecution.

WHEN DOES A CONSPIRACY EXIST

The essence of conspiracy is the agreement to commit an illegal act. Iannelli v United States, ____ U.S. ____; 43 L. Ed 2d 616; 95 S. Ct. 1284 (1975); United States v Snider, 720 F.2d 985 (8th Cir. 1988), cert. denied, 465 U.S. ____; 80 L. Ed 2d 142; 104 S. Ct. 1613 (1984).

An overt act is required for a conspiracy under 21 U.S.C. §846. If the statute requires an overt act and there is none, as essential element of this claimed conspiracy is missing. What overt act did petitioner Amoia partake.

The proponent of the evidence must prove that petitioner Amoia knew of the conspiracy, purposefully associated himself with it and affirmatively cooperated in it, or at least agreed to cooperate in the objective of the conspiracy. Mere knowledge of the existence of a conspiracy or mere presence or association with individuals engaged in illegal conduct is not sufficient to establish that a party knowingly contributed efforts in furtherance of a conspiracy and

thus participated in a conspiratorial agreement. Casperson, 773 F.2d at 221; United States v Soto, 716 F.2d 989 (2nd Cir. 1983)(mere presence, even with knowledge that a crime is being committed there, is not sufficient to establish that defendant was a member of the conspiracy).

The prosecutor in the instant case violated the separation of Power Doctrine. See Omnibus Appropriations Act, Pub. L. No. 105-277, Tit. VIII, §801, 112 stat. 2681 (1998)(to be codified at 28 U.S.C. §530 B(a)&(c)(eff. April, 1999); 28 C.F.R. §77.1(1)(1998). This statute strongly suggest that the Congress does not view government attorneys as one with the sovereign, beyond regulation.

The government erroneously conflates two distinct concepts; the vested sovereign prerogative of the government to prosecute and the obvious non-prerogative of how to prosecute.

The Anti-Gratvity Statute Limits how the government may prosecute its case. The government has no vested sovereign prerogative to prove a case in any way it wishes. How the government proves its case is frequently restricted. Federal prosecutors must follow the Constitution, State Codes of Conduct, the Rule of Individual Courts, and the Rule of Evidence.

A Federal prosecutor is not above the law and is not free to prove a case by any process (s)he wants. See Matter of Doe, 801 F. Supp. at 484-87; In re Howes, 940 P2d 159, 164-65 (N.M. 1997).

The Governments' position asserts that because the Dictionary Act defines "whoever" in a manner that does not expressly include the federal government, see 1 U.S.C. §1. Congress could not have intended its use of "whoever" in §201(c)(2) to include the government and its agents. Part of the purpose of §201, however, is to criminalize certain behavior of government officials. See 18 U.S.C. §201(b)(3). In addition, as the government itself stated that a prosecutor who corruptly bribes a witness to provide testimony is liable under 18 U.S.C. §201(b)(3), which, like §201(c)(2), merely uses the word "whoever" to identify potential liable parties. If "whoever" can refer to government agents in one part of the statute, then it surely can refer to government agents in §201(c)(2).

It is clearly established that issues not raised in the district court can be reviewed by this Court for plain error. United States v Olano, 113 S. Ct. 1770 (1993); Johnson v United States, 117 S. ct. 1544, 1548-49 (1997). Further, the errors affected the substantial rights of the petitioner. The "errors seriously affects the fairness, integrity, or public reputation of judicial proceedings" since it involves a conviction obtained by illegal means. Therefore, this issue should be reviewed by this Court.

The petitioner would also state that he is not raising a "Singleton" issue, but rather he is using the panel's ruling in Singleton to illustrate that the Government violates the plain and unambiguous language

of §201(c)(2) when it promised something of value in exchange for testimony. The Government does violate federal law, specifically 18 U.S.C. §201(c)(2), in exchange for testimony of co-conspirators. Additionally, the Tenth Circuit's opinion in Singleton has held that the anticipated testimony of the co-conspirators should be suppressed because the plea agreements of these co-conspirators violated the clear and unambiguous meaning of §201(c)(2). United States v Lowery, No. 97-368-CR, 1998 WL 493818, Zlock, J. (S.D. Fla. 8/4/98).

"It is a basic tenet of statutory construction that 'courts in applying criminal laws generally must follow the plain and unambiguous meaning of the statutory language.'" Lowery, quoting Salinas v United States, 118 S. Ct. 469, 474 (1997). In interpreting a statute, the starting point should be the "language of the statute itself." Consumer Product Safety Com. v GTE Sylvania, Inc., 447 U.S. 102 (1980). "As a general rule of statutory construction, where the terms of the statute are unambiguous, and where the 'statutory scheme is coherent and consistent', judicial inquiry is complete." Lowery, quoting United States v Ron Pair Enterprises, Inc., 489 U.S. 235, 240 (1989). When Congress enacts a statute, courts must presume that the statute says what it means and the role of the judiciary is to enforce the statute according to its terms. Id. "Courts must draw from the language itself, the specific context of such language and the broader

context of the entire statute." Lowery, quoting Robinson v Shell Oil Company, 519 U.S. 135, 147 (1997). None of these statutes permit the rewarding of testimony prior to the time when it is given.

Petitioner Joseph Amoia contends that the appropriate remedy in his case is to overturn his conviction. In the absence of the testimonies of the co-conspirators, a rational juror could not find all the elements of the charge conspiracy beyond a reasonable doubt. At the very least, the petitioner should be given a new trial and the testimony of co-conspirators promised something of value should be excluded.

Contrary to the government's position that the exclusionary rule should not be applied in this case because the Government was engaged in a practice that was ingrained in the criminal justice system. However, the Government fails to understand that its actions violates the plain meaning of §201(c)(2). If the Court would strictly adhere to the remedy provided in the statute, the result would be that there would not be an adequate remedy. See Lowery at *10. Although the remedy is harsh, it is the only way to remedy the conduct of prosecutors throughout the country who are violating federal law in obtaining convictions.

The AUSA was/is guilty of perverting the criminal justice system. If the Government can make a contract with known criminals for evidence, there will never be any way to ensure the reliability of the truth-seeking

function. Witnesses intimidation, bribery [money and leniency of sentences] and veritable glossary of promises will become rampart.

The Government and FBI Agent Dean Naum efforts to convince Michael Graziadei, Peter Cammilleri, Andrew a/k/a 'Baby' Novino, Sam Lauricella, Carmen Intorre in agreement to accept a plea and become witnesses for a minimum or no prison term exposure, no matter what other crimes they committed.

The essential elements of Carmen Intorre, Peter Cammilleri, Andrew Novino, Thomas Northrup and Sam lauricella's cooperation had already been negotiated, immediately when Michael Graziadei understood that Bill Koopman was indicted for murder, cocaine trafficking and started to cooperate with the government in exchange for a five year prison term for murder. It was just a matter of time that Michael Graziadei made a deal with FBI Agent Dean Naum, wanting the same deal that Koopman received, and Michael Graziadei started testifying on everyone in his cartel organization.

The stipulations in the negotiations between the AUSA and mentioned witnesses culminated when the witnesses were already charged with other offenses, that the government would honor any agreement.

In fact, the AUSA needed Michael Graziadei badly and had no means of obtaining his testimony, except in promising 'leniency and immunity' for murder and the RICO convictions.

The AUSA indicted ten individuals via a grand jury

indictment in 1992, for conspiracy to drug trafficking. Petitioner Joseph Amoia was not included. That was the start of Michael Graziadei testifying against his cartel organization associates. This is when FBI Agent Dean Naum approached and tried to coerce Frank Morrocco to become an informant on other co-conspirators.

Two years later in 1994, on October 14, a one count superseding indictment charging petitioner Joseph Amoia with a conspiracy "to distribute five kilograms or more of a substance containing cocaine" in violation of 21 U.S.C. §846.

The AUSA cannot deny that he was well-versed in the methods of narcotics trafficking such as Graziadel's Cartel. Those methods included: murder, inter-state drug trafficking, extortion, robbery, and other forms of intimidation.

Where was the truthful credibility of key witnesses whom the AUSA vouched for and used to convict petitioner. The credibility of witnesses was tainted, untruthful and perjures.

It is nationally known that law enforcement agencies [FBI and Police] do lie in their investigations and when they take the stand to convince the jury that a defendant was guilty of an offense. Two landmark cases was Rodney King and O.J. Simpson. In O.J. Simpson's case, Det. Mark Furhman planted evidence plus lied on the stand in open court. Also, that courts are well aware that law enforcement agents have the tendencies to lie giving weight of their

official position for a conviction.

The AUSA used devious distorted means as evidence, i.e. petitioner bringing a car into the repair shop that witness Graziadei owned, and if other individuals were there for other reasons, petitioner Joseph Amoia can not be accountable for their actions, and by petitioner being there doesn't suggest initiate that a transaction or conspiracy developed. It is a human norm to converse with the owner of the shop explaining what is needed in repair.

Petitioner Amoia did not receive the full canopy of the constitutional rights towit: (1) being able to freely talk with whoever, First Amendment; (2) not receiving a fair and impartial trial whereas the jury was not fully appraised completely of essential elements of proof, the Fifth Amendment; and (3) denied the full scope of equal protection and due process of law during the entire criminal process, Fourteenth Amendment. Thus causing the domino effect, denying petitioner Joseph Amoia his rightful constitutional rights that is guaranteed by the United States Constitution.

PETITIONER AMOIA WAS PREJUDICALLY DENIED ACCESS TO THE BILL OF PARTICULARS THAT COMES UNDER RULE 16 OF FEDERAL RULES OF CRIMINAL PROCEDURES, DISCOVERY AND INSPECTION WHICH THE GOVERNMENT MUST DISCLOSE UPON REQUEST

In the Government's Exhibit 3551-A, in part: [INFORMATION] charging Michael Graziadei, Count 1, the

United States Attorney charged that: From on or about January 1, 1979 to on or about November 1, 1988, in the Western District of New York and elsewhere, MICHAEL GRAZIADEI, the defendant herein, being a person associated with an enterprise.

Directing this honorable Court's attention to number one of RACKETEERING ACT ONE, First line "From on or about January 1, 1979 to November 1, 1988. Petitioner Amoia strongly argued in his omnibus pre-trial motions, in that, "that the prosecution did not commence in a timely fashion." The Second Circuit Court of Appeals in their decision denying petitioner's appeal, quote "Furthermore, the evidence showed that the conspiracy continued into the limitation period." The Court also stated that defendant did not request that the jury be charged on the same. In essence, defense attorney, Mr. Brown did not use his knowledge and skills defending petitioner to the best of his legal ability, acting as petitioner's medium.

The most curious document of all is MICHAEL GRAZIADEI'S PLEA AGREEMENT. This is clearly a document written factually. The Government well understood that MICHAEL GRAZIADEI was acting as an agent of the Government in this matter.

That the Government was under pressure to obtain GRAZIADEI'S full cooperation for the Government is reflected in the terms of Graziadei's Rule 35 agreement.

The AUSA agreed to seek a reduction in Graziadei's

and all other witnesses sentences as a consequence of their efforts to assist the Government.

As this Court will discover, the government's admission concerning all the witnesses importance are binding upon the Government. Moreover, this Court's findings of fact are res judicata on the question of all the witnesses's role in the case and the impact upon the jury.

Thus, to the extent that a review of the record is appropriate, it is appropriate in the context of determining the materiality of the government's error in failing to disclose its pact with the witnesses. To that end, this Court must consider the extent to which the government's case was already weak, and the probable effect that the disclosure would have had on the jury's perception of the government's witnesses and its theories. Petitioner will demonstrate that the government's case was not overwhelming since much of the case was contradictory and built upon testimonies of witnesses of dubious credibility.

POINT 2

CAN THE UNITED STATES ATTORNEY'S OFFICE KNOWING UNDER FALSE PRETENSES SUBMIT TO A GRAND JURY FOR AN INDICTMENT A SPECIFIC DATE AND THEN ALLEGE ANOTHER DATE IN OPEN COURT

On petitioner Amoia's indictment charges, it stated: From sometime prior to January 1, 1982, and continuing thereafter into early 1990, the exact dates being unknown

. . defendants . . . conspired . . . to violate 21 U.S.C. §846(a)(1) and (b)(1)(A) by . . . distributing and processing with intent to distribute five kilograms of a . . . substance containing cocaine, a Schedule II controlled substance.

In Appendix-C, it states from on or about January 1, 1979 to November 1, 1988, on the information charged against the government's key witness, MICHAEL GRAZIADEI, signed by Dennis C. Vacco, United States Attorney dated June 27, 1991. Yet the government alleged that the conspiracy continued until 1990.

Given that peculiar history of this case, the fundamental question that the conspiracy charged, the statute of limitation rises. The indictment against petitioner Joseph Amoia was filed on October 1994, and the five year statute of limitation period therefore began on October 14, 1989.

Petitioner Amoia contends by definition, an unidicted co-conspirator is someone against whom no prosecution has been initiated. Therefore, the protection of the Sixth Amendment is attached at the moment he was named in the superseding indictment. That the Due Process Clause of the Fifth Amendment would require dismissal of the indictment by actual prejudice resulted from preaccusation delay which was an intentional device to gain and school the government's key witnesses, a tactical advantage over the petitioner.

The right to particularization is not merely a creature of statute, but emanates from several fundamental constitutional rights, including the right to present a defense, to have notice of the charge, and to have effective representation. All of these rights are jeopardized if an accused is not informed of the precise conduct which is thought to have rise to criminal liability.

POINT 3

WHETHER PETITIONER RECEIVED A FAIR AND IMPARTIAL TRIAL WITH USAGE OF GOVERNMENT WITNESSES OF DUBIOUS CREDIBILITY AND EVIDENCE THAT WAS BOTH CONTRADICTORY AND CONFUSING WITH PROMISES OF IMMUNITY AND LESSER SENTENCE

Its essential to understand that MICHAEL GRAZIADEI and MICHAEL BISCOTTO were the major gears in the center of the conspiracy to finance, control and distribute cocaine. That MICHAEL GRAZIADEI was one of the significant witnesses offered by the government in this case.

In the eleven pages of APPENDIX-G of an interview conducted by FBI Agent Dean Naum with the government's witness Michael Graziadei. Mr. Graziadei named his co-conspirators; Michael Biscotto, Tony Rizzo, Peter Cammilleri, Alan Levine, Luciano "Dilly" Spataro, Bily Koopman, Jose DeCastro, Frank Marrocco, Jr., Carlos Perez-Napoles, Laurie Doe, Carl Rosso, Mark Amoia, Dino Miosi, Thomas Verrastro, Ronald Carlisle, Russell Tirone and Sam Lauricella. These co-conspirators were the axle of GRAZIADEI'S Cartel, that adhern to Graziadei's bidding such as, inter-state transporting of cocaine from Florida and New York, and distributing locally in the Buffalo area. Michael Graziadei and Michael Biscotto were the King Pins to financing the purchasing and distributing of cocaine.

Alan Levine loaned a large amount of money to Michael Graziadei for the purpose to purchase marijuana and cocaine. Graziadei lived beyond his means and fell behind in repaying Alan Levine. Alan Levine threatened Graziadei 'that if he didn't pay up, that he (Alan Levine) would go and have a talk with Graziadei's father who was a millionaire'. Michael Graziadei was/is a psychopath who came from a wealthy family. His goal in life was to be a want-to-be gangster. He portrayed a distorted personality complex with a very narrow margin for the value of human lives.

Therefore, Graziadei initiated the murder of Alan Levine for 4 ozs. of

cocaine paid to Tony Rizzo, who killed Alan Levine by shooting him in the back of the head, with Sam Lauricella aiding & abetting.

Nowhere during the interview with Graziadei did he mention or name that petitioner Joseph Amoia was ever an active actor or co-conspirator with purchasing or distributing cocaine.

Thus, to the extent that a review of the record is appropriate in the context of determining the materiality of the government's error in failing to disclose its pact with all the witnesses. To that end, this Court must consider the extent to which the government's case was already weak, and the probable effect that the disclosure would have had on the jury's perception of the government's witnesses and its theories. The government's case was not overwhelming since much of the case was contradictory and built upon testimony of witnesses of dubious credibility. Michael Graziadei made up details to suit himself and the government's need to prosecute petitioner Joseph Amoia, as a means of proving his own virtur and creditability. How could the AUSA have been so presumptuous.

Peter Cammilleri, government's witness testified that his career as a drug trafficker began with Michael Graziadei, and that eventually began muling cocaine for Graziadei to New York and Florida, between 1986-1987. Cammilleri testified he was an FBI Informant who wore a recorder on his person, and not once did the recorder capture petitioner's voice in a sinister agreement for a conspiracy to distribute cocaine. Cammilleri's

testimony exonerated petitioner Joseph Amoia of any involvement or a co-conspirator.

Russell Guarino, who was part of the narcotics organization of Michael Graziadei, around 1985 or 1985, related who directed and financed the cocaine deal, naming Biscotto and Graziadei in an interview with AUSA Bruce on August 14, 1992. **Appendix-E**. Petitioner Joseph Amoia was not mentioned one time, as a co-conspirator to distribute cocaine.

Sam Lauricella, an admitted cocaine user, arsonist, extortionist, aider and abettor in murder, was Michael Graziadei's chief right hand-man, who was responsible for inter-state import of 87 kilograms of cocaine from Florida. Lauricella testified he became involved with Graziadei in the early 80's.

An agreement was reached between Michael Graziadei and Sam Lauricella to purchase cocaine prior of moving to Florida. Once Lauricella settled down in Florida, he obtained approximately 87 kilos of cocaine between 1983-1988, set up transportation to Buffalo, New York. Once back in Buffalo, Lauricella stored cocaine at his house, his sister's house and his ex-wife's house.

Lauricella being Graziadei's right hand-man conspired with Graziadei and Tony Rizzo to murder Alan Levine, and remove the body afterwards.

Lauricella took part in a fraud with Graziadei, who master-minded, extorting an Insurance Company [car fraud].

Lauricella placed a kilo in a truck of a car under

the instructions of Graziadei; Lauricella hung out at Tech Garage and testified in court that he never seen petitioner Joseph Amoia bring, touch or hand Graziadei a package of cocaine.

Lauricella had testified in 1992, involving drug activities of other co-conspirators, and as a result of his cooperation, he was granted immunity and was never charged for aiding & abetting murder or placed in prison. In response to inquiry by AUSA, Lauricella affirmed that promises made to him were reflected in the plea agreement, and that his testimony was voluntary after becoming a partner with the government with the inducement of leniency and immunity.

Lauricella named individual co-conspirators and not once did the name of petitioner Joseph Amoia appear. **APPENDIX G.**

Anthony Durant was employed in a large-scale cocaine organization in the mid-1980's, by his former brother-in-law Michael Biscotto, and Durante interacted with numerous individuals in direct relation to Biscotto's drug organization.

FBI Agent Dean Naum interviewed Durante, **Appendix-F.**

Michael Biscotto committed suicide after being indicted.

Mere submission of proposals, in corporating a precondition not met, is not a conspiracy when the circumstances do not justify an inference of fact that the agreement survived the rebuff. In other words, an

agreement to agree to distribute cocaine is not necessarily an agreement to distribute cocaine. United States v Lively 803 F. 2d 1124, 1126-28 (11th Cir. 1986); United States v Jones, 765 F.2d 996, 1003 (11th Cir. 1985); United States v Podolsky, 708 F.2d 117, 178 (7th Cir. 1986); United States v Melchor-lopez, 627 F.2d 886, 891 (9th Cir. 1986).

Petitioner argues that there was insufficient exculpatory evidence of his possession of cocaine to support a conviction or that he was a active co-conspiratory. Where there is a claim of insufficient evidence, a review of records, to determine whether a reasonable jury could have found petitioner guilty beyond a reasonable doubt of the essential element of the crime. United States v Douglas, 780 F.2d 1472, 1476 (9th Cir. 1986).

To sustain the conviction, the government had to prove that petitioner Joseph Amoia had dominion and control of the cocaine as a co-conspirator. There was no preponderance of evidence, only perjures testimony by government witnesses. Petitioner was ambushed by the AUSA who persecuted petitioner, not prosecuted.

By preponderance of visible [video tapes] possession of cocaine, or a recording of petitioner's voice agreeing to conspire to purchase and distribute cocaine, the essential element, was required insofar would have erased 'beyond a reasonable doubt of any fact', that petitioner Joseph Amoia was a co-conspirator.

On the threshold, three facts at trial had to be

established, (1) the existence of a drug conspiracy; (2) the defendants' long association; (3) the substantial amount of money involved. Pinkerton v United States, 328 U.S. 640; 66 S. Ct. 1180; 90 L. Ed 1489 (1946).

Contradictory testimony of key witnesses, did not prove they ever saw petitioner Joseph Amoia handle cocaine, whereas, giving weight to the charge of conspiracy. Basically, it was Graziadei's word against petitioner's word, the only evidence, and by the jurors placement of trust upon the AUSA to try the case fairly, giving petitioner the safe-guard of equal protection and due process of law, Fourteenth Amendment. I.E., that the AUSA would not violate his office and position in the usage of perjures testimony 'in want of a conviction.' The governments' witnesses contradicted each other in mass confusion.

As to the jurors, they had no comprehension what the witnesses' testified to, because they came from the rural area surrounding Buffalo, New York and they had no first hand insight of drug activities. They were unlearned [law school] in the field of legality nor the intricacies and meanings of instructions that the court gave. The jurors relied upon guidance from the prosecution and defense as well as the court, safeguarding petitioner's constitutional rights, Fifth, Sixth and Fourteenth Amendments.

Recognizing a question under both the Due Process Clause of the Fourteenth Amendment and the jury guarantee of the Sixth; when a jury determination has

not been waived, fact-finding by preponderance of evidence is essential. The seriousness of due process cannot be manipulated to reallocate traditional burdens of proof.

The prejudicial effect of evidence relating to guilt is generally held to be neutralized by careful instructions by the trial judge.

It is difficult to believe that the jury . . . aided by instructions . . . was unable to distinguish between evidence relating to transactions and evidence establishing other occurrences, what a co-conspirator's role consists of, to be an actual co-conspirator. The jurors were not fully informed and they only heard what the witnesses testified to after being schooled by the AUSA.4/

Petitioner Joseph Amoia contends that his conviction must be overturned of the charge, conspiracy. That there was no evidence to convict petitioner, and the AUSA violated Statutes and Constitutional Rights 'in want of conviction.'

4/ The jurors heard the bell ring [testimonies] of government witnesses and they cannot unring the bell; after the thrust of the saber, it is difficult to say forget the wound; and finally "if you throw a skunk into the jury box, you cannot instruct the jury not to smell it." Thompson v United States, 546 A.2d 414, 425 (D.C. 1988).

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 98-1649

UNITED STATE OF AMERICA,

Plaintiff-Appellee,

v

MICHAEL RAY BISCOTTO, JOSE DECASTRO, aka Hutch, FRANK J. MORROCCO, JR., CARLOS PEREZ-NAPOLES, LUCIANO SPATARO, aka Dilly, LAURIE DOE, CARL ROSSI, MARK AMOIA, PETER CAMMILLERI, ROBERT VACCANTI, DINO MIOSI, THOMAS VERRASTRO, RUSSELL TIRONE, RONALD CARLISLE,

Defendant-Appellants,

JOSEPH AMOIA,

Defendant-Appellant,

Appeals from the United States District Court
for the Western District of New York (Curtin, J.)
(Filed August 6, 1999)

Before Pierre N. Leval, Sonia Sotomayer (Circuit Judges) and Frederick J. Scullin, Jr. (District Judge, Northern District of New York, by designation)

PER CURIAM:

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the District Court be and it hereby is AFFIRMED.

Appellant Joseph Amoia contends his conviction must be reversed because of three errors in the jury instructions - failure to charge on the presumption of innocence; use of the language "a doubt which would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life" in explaining the concept of "a reasonble doubt"; and instruction on the purpose served by the law criminalizing conspiracy. We reject the contentions.

1

As to failure to charge on the presumption of innocence, when invited to take exceptions to the charge, the defendant made no objection on this ground as required by Fed. R. Crim P. 30. In order to prevail, defendant, therefore, must show that this omission met the standard of plain error. The court did instruct the jury on the presumption during jury selection. It also explained that the government must prove guilt beyond a reasonable doubt. Under all the circumstances, the failure did not constitute plain error. See United States v Velez-Vasquez, 116 F.3d 58, 61 (2nd Cir. 1997). As to the charge on legislative purpose, which likewise was not objected to, we have held that such a charge is not plain error. See United States v Perez, 702 F.2d 33, 37-8 (2nd Cir. 1983). We have also upheld charges on reasonable doubt using the

"hesitate" formula quoted above. United States v Reese, 33 F.3d 166, 172 (2nd Cir. 1994); Perez v Irwin, 963 F.2d 499, 502 (2nd Cir. 1992). Although the formulation has occasionally been criticized, defendant points to no holding that the giving of such a charge is plain error.

2

Defendant's other contentions are also without merit. We mention a few. The indictment, supplemented by the bills of particulars adequately apprised the defendant of the charge. There was no error in failing to charge the jury on the defense of the statute of limitations, as the statute of limitations is an affirmative defense and defendant did not request that the jury be charged on the issue. United States v Kelly, 147 F.3d172, 177 (2nd Cir. 1998). Furthermore, the evidence showed that the conspiracy continued into the limitation period.

3

Nor is there merit to the defendant's contention that the court erred in setting the sentence under the United States Sentencing Commission's Guidelines Manual. The court found a base offense level of 34, which applies to "[a]t least 15 kilograms but less than 50 kilograms of cocaine." The evidence very strongly supported a finding far in excess of 15 kilograms. Although the judge did not expressly state the quantity found, it was clear under the circumstances that the court found that the defendant's crime involved more

than 15 kilograms of cocaine.

APPENDIX B

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA — **JUDGMENT IN A CRIMINAL CASE**

v. — No. 1:92CR00113-009

JOSEPH AMOIA — Patrick Brown
Defendant's Attorney

THE DEFENDANT:
[x] pleaded guilty to count 1
[ ] pleaded nolo contendere to count(s)_____
which was accepted by the court.
[ ] was found guilty on count(s)_____
after a plead of not guilty.

Title & Section: 21 U.S.C. §846 as it relates to 21 U.S.C. §841(a)(1) and 21 U.S.C. §841(b)(1)(A)

Nature of Offense: Conspiracy to Possess With Intent to Distribute 5 Kilograms or More of Cocaine

Date Offense Concluded: 2/90

Count Number(s): 1

The defendant is sentenced as provided in this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

BEST AVAILABLE COPY

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's S.S.N.: 097-50-1279

Defendant's D.O.B.: 4/14/56
Defendant's USM No.: 11857-064

November 2, 1998
Date of Imposition

John T. Curtin
Senior U.S. District Judge
Signature & Title
Judicial Officer

Dated: 11/9/98

IMPRISONMENT

The defendant is hereby committed to the custody of the United State Bureau of Prisons to be imprisoned for a total term of 170 months. The cost of incarceration fee is waived.

[x] The court makes the following recommendation to the Bureau of Prisons: The defendant is to be designated to FCI McKean. The defendant shall participate in the Inmate Substance Abuse Treatment Program.

[x] The defendant is remanded to the custody of the United States Marshal.

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall complete a drug/alcohol evaluation and enter into any treatment, to include urinalysis and other testing as directed by the probation office. The defendant is not to leave treatment until discharge is agreed to by the probation office and treating agency. While in treatment and after discharge from treatment, the defendant is to abstain from the use of alcohol.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following criminal monetary penalties in accordance with the schedule of payments set forth. Assessment: $50

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows: (A) [x] in full immediately.

STATEMENT OF REASONS

[x] The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary): The Court found the appropriate guideline for amount of cocaine was pursuant to §2D1.1(c)(3) and the Court did not apply a

two (2) level upward adjustment for obstruction of justice. (§3C1.1)

Guideline Range Determined by the Court
Total Offense Level: 34
Criminal History Category: 1
Imprisonment Range: 151 to 188 months
Supervised Release Range: 5 to 5 years
Fine Range: $25,000 to $4,000,000
[x] Fine waived or below the guideline range because of inability to pay.
Total Amount of Restitution: $N/A
[x] The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s): Due to the nature of the crime and amount of cocaine, a sentence toward the mid portion of the guideline range is appropriate.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff, CR-91-00166

v INFORMATION
(Title 18, U.S.C.
MICHAEL GRAZIADEI, §§1962(c) and 2)

Defendant,/

COUNT I

The United States Attorney Charges That:

From on or about January 1, 1979 to on or about November 1, 1988, in the Western District of New York and elsewhere, MICHAEL GRAZIADEI, the defendant herein, being a person associated with an enterprise, as that term is defined in Section 1961(4) of Title 18 of the United States Code, which enterprise was engaged in and the activities of which affected interstate and foreign commerce, conducted and participated directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity consisting of the following acts:

RACKETEERING ACT ONE

1. From on or about January 1, 1979 to November 1, 1988, the defendant, MICHAEL GRAZIADEI, conspired with others known and unknown, to violate Section 841(a)(1) of Title 21 of the United States Code; that is, to distribute cocaine, a Schedule II controlled substance, and to possess cocaine with the intent to distribute, in violation of Section 846 of Title 21 of the United States Code; and

RACKETEERING ACT TWO

2. On or about September 18, 1986, the defendant, MICHAEL GRAZIADEI, caused another, whose identity is known to the United States Attorney, to murder Alan

Levine, in violation of Sections 125.25 and 20.00 of the New York Penal Law.

ALL in violation of Sections 1962(c) and 2 of Title 18 of the United States Code.

Dated: Buffalo, New York, June 27, 1991.

DENNIS C. VACCO
United States Attorney

APPENDIX D

FEDERAL BUREAU OF INVESTIGATION

Investigation on 8/1/90, 9/4/90, 9/5/90 at Buffalo, New York, File No. *183A-1136, 12A-208, by SA Dean G. Naum and SA Jeffery R. McLane.

MICHAEL PAUL GRAZIADEI was interviewed concerning the murder of ALAN LEVINE which occurred on or about September 19, 1986. He thereafter advised as follows.

GRAZIADEI admitted that he was responsible for the murder of LEVINE and that he had made arrangements (hired) TONY RIZZO to carry out the murder. He further admitted that he was present along with SAM LAURICELLA when RIZZO shot LEVINE and which occurred at a small commercial type garage used by RIZZO and located in the vicinity of Main Street and Lafayette. He also acknowledged that he had originally made arrangements with RONNIE CARLISLE to carry out the murder of LEVINE,

however CARLISLE delayed murdering LEVINE after LEVINE offered $20,000 to CARLISLE to murder a individual in PENNSYLVANIA.

GRAZIADEI thereafter provided details concerning the events leading to the murder of LEVINE which are as follows.

GRAZIADEI stated that he had met LEVINE around 1983 or 1984. At that time GRAZIADEI was engaged in the distribution of cocaine and that distribution involved multi-kilo amounts. LEVINE was at the time operating with his family the Town Motel on Main Street, Buffalo. GRAZIADEI believes that he was introduced to LEVINE by FRANK MAROCCO (phonetic) who was involved with Graziadei in the distribution of cocaine. Morrocco who was then involved in the purchase and sale of used cares was borrowing money from Levine on a six for five basis to finance these transactions. Morocco eventually "screwed up" a deal with Levine and Levine seized Morocco's car.

Graziadei learned after meeting levine that Levine had access to large amounts of money and was lending money on a six for five basis to many individuals for illegal purposes to include the purchase of narcotics. Levine according to Graziadei was involved in such transactions with a number of unidentified black narcotic dealers on the east side of Buffalo. In addition, Levine was purchasing vehicles for pimps and/or dope dealers which he Levine would then register to his corporation, 999 Maine Street

Corporation and the persons using these vehicles would pay Levine a large amount of money on a monthly basis to shield their financial interest in these vehicles. Graziadei stated that he also became aware after meeting Levine that Levine was also involved in narcotics trafficking.

Shortly after meetig Levine, Graziadei initiated a ongoing relationship with Levine and which lasted up until the death of Levine in September, 1986. During this time Graziadei borrowed large sums of money from levine on a six for five basis which Graziadei used to purchase narcotics. Levine charged a high rate of interest which included interest upon the interest when the payment was not made on time. Graziadei stated that he routinely borrowed on a regular basis $10,000 to $30,000 at any one time. Graziadei shortly before Levine's death owed him between $22,000 and $27,000 for a previous loan to finance narcotics and that Levine had also provided him with an additional $75,000 which Graziadei was to use in purchasing marijuana for Levine through a contact of Graziadei's located in Florida.

Graziadei stated that he routinely made large cash payments to Levine on a six for five loan and on some occasions provided Levine with ounce quantities of cocaine. Graziadei stated that Levine was a person who would always hound him in making payments on his debt and which brought pressure to bear on Graziadei.

Graziadei related that at the time of Levine's death Graziadei was indebted to Levine

($22,000-$27,000) and was also indebted to Perry Grante and Mike Biscotto who were two individuals who supplied Graziadei with amounts of cocaine which Graziadei subsequently distributed. Grante and Biscotto at the time were fronting cocaine to Graziadei which he sold and used the cash from these sales to repay his debts to Grante and Biscotto.

Graziadei stated that he did not have the money to pay Levine on his outstanding debt and that Levine was pressuring him to make payments. At the time Levine was interested in obtaining a kilo of cocaine and Graziadei arranged to provide a kilo of cocaine from Granti and which was fronted to Graziadei. Graziadei stated that he gave this cocaine to Levine and which was to have settled his outstanding debt. Graziadei felt that this would get Levine off of his back and that he, Graziadei could eventually repay Grante for the kilo that had been fronted through the sales of narcotics.

Two or three days after providing Levine with the above cocaine, Graziadei received a call from Levin and met with him. At the time Levine complained that the cocaine was no good and that he was returning the package to Graziadei. Levine stated that he had taken some cocaine from the package "for interest" and Graziadei thought that he was talking about an ounce or so. Graziadei subsequently returned the kilo to Grante prior to weighing it after receiving it from Levine. Grante thereafter contacted Graziadei and informed him

Two or three days after providing Levine with the above cocaine, Graziadei received a call from Levin and met with him. At the time Levine complained that the cocaine was no good and that he was returning the package to Graziadei. Levine stated that he had taken some cocaine from the package "for interest" and Graziadei thought that he was talking about an ounce or so. Graziadei subsequently returned the kilo to Grante prior to weighing it after receiving it from Levine. Grante thereafter contacted Graziadei and informed him that the package was short by 12 ounces. Grante stated that Graziadei was responsible for this cocaine and which increased his debt with Grante.

While these events were taking place SAM LAURICELLA who was closely associated with GRAZIADEI in the distribution of cocaine was residing in south Florida. Lauricella had been in the Florida area for the past few years and prior to his departure had delivered cocaine with Graziadei. Lauricella after moving to Florida established a dope contact and would send or deliver kilo amounts of cocaine to Graziadei. Lauricella was accepting order from Graziadei for cocaine and Graziadei was paying Lauricella a thousand to two thousand dollars on each kilo of cocaine that was purchased. Graziadei stated that RUSSELL TIRONE was hired by Graziadei to travel to Florida to pick up and deliver shipments of cocaine back to Buffalo which had been purchased for Graziadei by Lauricella.

Graziadei recalled that after the Levine-Grante

coke deal he was being contacted by Biscotto who was also hounding him for money owed on outstanding narcotics debts. At this same time BILLY KOOPMAN and RUSSELL GUARINO and/or CARMEN SPATARO were in Florida for the purpose of picking up a shipment of marijuana for Biscotto. This shipment was being arranged through "Hutch" a source of cocaine out of New York City for both Biscotto and Graziadei. The above persons with the exception of "Hutch" were staying with Lauricella, however the deal for the marijuana was not consummated. Although Graziadei was not part of this deal to purchase marijuana, he Graziadei had mentioned the marijuana transaction to Levine and indicated that he Graziadei was to receive a significant amount of marijuana which he would sell in the Buffalo area and the profits would be used to pay off his outstanding debt to Levine.

Shortly after Levine became aware of the marijuana deal through Graziadei, Levine contacted Graziadei and stated that he wished to purchase a signficant amount of marijuana. Graziadei advised Levine that he could make this connection for him through Graziadei's contacts in Florida. Levine then provided Graziadei with $75,000 in cash which was to be used to purchase marijuana and which was to be delivered to Levine at Buffalo. Graziadei when he received the money was fully aware that the marijuana deal was dead.

Graziadei stated that he decided that he could

use Levine's $75,000 to purchase three or four kilos of cocaine through Lauricella in Florida. He immediately made arrangements through Lauricella to purchase three or four kilos of cocaine and gave the money to Peter Cammilleri to deliver to Lauricella in Florida. Cammilleri had previously been used by Graziadei to transport kilo amounts of cocaine to Buffalo from Florida.

Graziadei stated that Lauricella purchased with the $75,000 four kilos of cocaine which lauricella and Cammilleri then transported to Graziadei at Buffalo. During this time Graziadei was assuring Levine that the marijuana deal was taking place and that the marijuana would be delivered to Buffalo in the next several days. Graziadei stated that during this time Levine provided to Graziei, Levine's tan older Mercury which would have been used to transport the marijuana that was designated for Levine. Graziadei noted that this is the car that was dumped on the street in close proximity to where Levine's body was found after he was murdered.

The four kilos of cocaine were stored at the residence of Lauricella's sister Nancy who lived on Potomac. Graziadei was at that time of the opinion that Dino Miosi and Joe Cavaretta would purchase the four kilos of cocaine. Graziadei stated that he brought Miosi and Cavaretta to Nancy's house to examine the cocaine, however they would not purchase the dope. Miosi stated that he was "taking a break" from the

narcotics business and Cavaretta did not have the money to make the purchase.

Graziadei stated that the failure of Miosi and Cavaretta to purchase the four kilos of cocaine had disrupted Graziadei's plan to make a profit and pay off Levine. Graziadei for the next few weeks put off Levine by telling him that the dope was being shipped to Buffalo, that it had arrived in Buffalo, that it was stored in a location and that Graziadei could not get to the car to get the dope for Levine.

Graziadei stated that in an effort to earn some money he opened one of the four kilos and fronted part of the package to Mark Amoia a dope dealer who then owed Graziadei $12,000 to $14,000 for previous cocaine transactions. Graziadei stated that Amoia took several ounces of cocaine from this package and never paid for the dope. Amoia then owed Graziadei around $30,000 and which is still outstanding.

Graziadei stated that he was then having tremendous pressure to pay debts to such individuals as Levine, Biscotto and Grante. He recalled that Levine was hounding him several times a day for the money and that the interest on the money was increasing each day. Levine threatened to go to Graziadei's father for the money and Graziadei did not want this to happen. Graziadei advised that because of the pressure from Levine he began thinking about killing Levine to relieve some of the pressure. Graziadei knew that he could not come up with the money to pay off his debt

and could not take much more of Levine's pressure.

Graziadei began discussing his thoughts or plans to have Levine killed. He discussed this with Mike Biscotto but did not identify the victim (Levine) to Biscotto. While discussing this with Biscotto, Graziadei was referred by Biscotto to RONNIE CARLISLE who did this type of work (murders). Graziadei stated that Carlisle was associated with him at that time and involved in Graziadei's narcotics business. Carlisle was also purchasing and re-selling drugs which he obtained from Graziadei.

Graziadei stated that he had several conversations with Carlisle who agreed to murder Levine. Sam Lauricella and Andrew "Babe" Novino were also aware of some of these discussions and of Graziadei's intent to have Levine murdered.

After making arrangements to have Carlisle murder Levine, Graziadei was instructed by Carlisle to being Levine to Garziadei's place of business a garage. Graziadei could not recall what he had promised to Carlisle to carry out the murder but did recall that Carlisle was to profit for his role. Lauricella was also to be present at the garage at the time that Levine showed up where he would be then confronted by Carlisle.

Graziadei stated that he knew that Levine would be calling his house for him on that particular day. He instructed his wife to tell Levine that he was at his garage knowing full well that Levine would come

there. He recalled that Levine came to the garage in his Mercedes and which occurred after closing hours. At that time Carlisle was inside the garage and brought with him JOE LASHAVIO (phonetic) an associate who apparently was to help Carlisle carry out the murder of Levine. Carlisle had brought with him his white 1977 or 1978 Cadillac Eldorado which was inside the garage with the trunk open. In the trunk of the vehicle was a weapon believed to be a .22 caliber Magnum which was to be used by Carlisle to murder Levine. Graziadei could not specifically recall the plans as to how Carlisle was to murder Levine but assumed that it would have taken place inside his garage. Graziadei noted that Carlisle's car was taken by Carlisle from ANGELO BRIANDI who owed money for drugs to Biscotto and which was taken by Carlisle.

Graziadei stated that a few days or several days prior to this time Levine was with Graziadei when Graziadei stopped to see Carlisle at h is residence on Massachusetts. Levine commented that he knew of Carlisle by reputation namely that he was a person who would carry out a contract murder. Levine told Graziadei that he would like to use Carlisle to murder a JOHN BLATZ who was from either Philadelphia or Pittsburgh. This individual, BLATZ, was involved in the sale of cars and was "clocking" cars and owed Levine money. Levine stated that he was lending large amounts of money to Blatz on a six for five basis which apparently had not been repaid. Levine told Graziadei

that he would pay $20,000 to have Blatz murdered. Levine was apparently afraid that Blatz who was in trouble with the law would "roll over" on him. Graziadei believes that Blatz eventually got in trouble with the law and may have been indicted.

Graziadei continued to state that when Levine came to the garage he saw Carlisle and had a conversation with him. Graziadei stated that at the time according to Carlisle, Levine offered him $20,000 to kill a guy and Carlisle agreed to do so. Graziadei stated that Levine took a piece of paper from the shop, wrote down his telephone number and gave it to Carlisle. Carlisle then took Graziadei to the side and stated that he would not murder Levine that night and would wait until Levine gave him the $20,000 to carry out the contract murder of the person in Pennsylvania. He assured Graziadei that he would then carry out the murder after he collected this money. Carlisle and Lashavio, then left the garage.

Earlier that day Levine accompanied by Frank Morocco had located his old car (tan Mercury) previously provided to Graziadei to transport the marijuana. This car was then being driving by Lauricella who was staying with Peter Cammilleri on Fargo Street. Levine and Morocco went to this address and Levine picked up the car with his extra set of keys.

After Carlisle and Lashavio left, Levine stated that he would be back in a little while. At that point

Levine was under the impression that his marijuana would be delivered to him that night by Graziadei. In a short while Levine came back to the garage in the older tan Mercury and which he apparently anticipated using to transport his marijuana. Graziadei believes that this was around 7:30 p.m. that evening.

Graziadei stated that at this time he did not know what he was going to do and that there was no plan to murder Levine on that evening. Graziadei told Levine that he had to pick up Lauricella and Levine pulled his car into the garage where he parked it. Levine then accompanied Graziadei in Graziadei's truck where they went to Cammilleri's house to pick up Lauricella. Prior to this Graziadei had informed Levine that Lauricella was the only one who had access to the marijuana and which was allegedly located in a parked car in a garage on the west side of buffalo.

After arrival at Cammilleri's house they discovered that Lauricella had just awoke and that was why he had not been at the garage. He told Graziadei to come back in an hour to pick him up. Levine stated he wanted to go to the V.I.P. on Sheridan Drive.

Graziadei and Levine proceeded to the V.I.P. and entered the premises. Upon arrival Graziadei saw TONY RIZZO who he had previously met through Biscotto and Carlisle. He had been informed by Biscotto and Carlisle which was later confirmed by Rizzo that Rizzo was a killer who had been involved in at least six homicides. Knowing this Graziadei took Rizzo aside,

pointed out Levine and told Rizzo that Levine was screwing him. He asked Rizzo if Rizzo would murder Levine. Rizzo immediately agreed to do so and arrangements were made for Graziadei to pay Rizzo with cocaine for carrying out this murder. Graziadei later that night provided Rizzo with four ounces of cocaine for carrying out this murder. Rizzo then asked Graziadei if he had a gun with him and Graziadei said that he did not. Graziadei stated that he could get a gun from Carlisle and Rizzo told him to do so and meet him within a short time at his garage at Main and Lafayette. At that time Graziadei was not aware of this garage and had never been to this location.

Graziadei and Levine then drove back to Cammilleri's house in Graziadei's truck where they picked up Lauricella. Graziadei at that time took Lauricella aside and related his conversation with Rizzo advising that Rizzo would carry out the murder of Levine.

Graziadei, Levine and Lauricella then drove to Carlisle's house on Massachusetts Street and Graziadei went upstairs where he had a conversation with Carlisle. Graziadei informed Carlisle of this conversation with Rizzo and that Rizzo had agreed to murder Levine. He stated that Rizzo needed a gun and Carlisle then provided him with a gun which he believes was a .22 long revolver and most likely a magnum. Carlisle wiped the gun clean prior to providing it to Graziadei. Graziadei stated that he handled this

weapon without any gloves and that his prints were most likely on the weapon.

After obtaining this weapon from Carlisle and informing him, Carlisle of the plans to murder Levine, Graziadei again accompanied by Levine and Lauricella proceeded to Rizzo's garage at Main and Lafayetee. All three of them entered the premises where Rizzo was waiting for them.

Graziadei stated that he and Rizzo went upstairs to what he believes was a loft like area at which time he provided Rizzo with Carlisle's gun. There was no detailed conversation as to how Rizzo was to carry out the murder but Graziadei did not believe that it would take-place at this garage. Rizzo and Graziadei then went back downstairs where they all including Levine and Lauricella had a beer or two. When they got up to leave Graziadei stated that he had to go to the bathroom and while in the bathroom heard what he believes were two shots. He came out of the bathroom and saw Levine face down by the front door with blood on the floor around his head. Lauricella was standing right there and apparently observed Rizzo shoot Levine. Lauricella later told Graziadei that Rizzo shot Levine in the back of the head.

Graziadei stated that he was upset that this had occurred at the garage and that people had seen him with Levine earlier that evening. He told Rizzo that Levine could not be found for the next several days. Rizzo told him not to worry and that he would take care of Levine's body. Rizzo also told Graziadei to meet

him, Rizzo later that evening at Carlisle's residence. Graziadei was to pay him with the four ounces of cocaine at that time.

After the murder Graziadei and Lauricella drove to the residence of SAM LICATA on Fargo Street and Lauricella then borrowed Licata's car (Buick). Graziadei and Lauricella then proceeded in these two vehicles (truck and Buick) to Graziadei's garage where Graziadei parked his truck.

Lauricella then took Levine's Mercury from the garage and Graziadei followed in Licata's car. They proceeded to Carlisle's house where they picked up Carlisle and informed him of the murder of Levine. Lauricella took the Levine car to Ganci Car Wash located on Massachusetts within a short distance from Carlisle's house. Lauricella went to the adjacent store and bought a pair of yellow gloves possibly rubber that he put on while washing and later driving the car. Lauricella washed Levine's vehicle while Graziadei and Carlisle waited in Licata's car. During this time Carlisle gave Graziadei instructions on what or how to do in the disposal of Levine's car and told Graziadei not to discuss this (murder of Levine) with anyone else.

After Lauricella completed washing Levine's car they proceeded in the two vehicles to the east side of Buffalo. Lauricella drove Levine's car and parked it off of East Ferry a block or two from Jefferson on a side street. The car was parked at the curb and Lauricella took the keys with him after parking the

car. They, Lauricella, Graziadei and Carlisle then proceeded in Licata's car to the vicinity of Elmwood and Bird where Lauricella dropped the Levine car keys down a sewer.

Graziadei stated that at about this time he believes that all three of them went to the residence of KATHY LAURICELLA the ex-wife of SAM who resided on Auburn Street. Graziadei had stored the open kilo of cocaine at this residence and Kathy Lauricell was aware that the dope was being stored there. He stated that he, possibly accompanied by Lauricella and/or Carlisle, went inside the residence and retrieved four ounces of cocaine from the opened kilo. Graziadei believes that Kathy was home at that time and they possibly recall this incident.

After retrieving the four ounces of cocaine Carlisle, Lauricella and Graziadei drove back to Carlisle's house where Rizzo was waiting. Graziadei at that time gave Rizzo the four ounces of cocaine for carrying out the murder of Levine. Graziadei could not recall if he saw Rizzo and Carlisle split the four ounces of cocaine between them but does recall that both Rizzo and Carlisle told him that they had split the four ounces paid for the murder of Levine. Graziadei believes that Lauricella is also aware that this four ounces was split between Rizzo and Carlisle.

Graziadei stated that later when Levine's body was found and reported in the newspaper he became aware that by chance the Levine car had been dumped in close proximity to where Levine's body had been dumped in a

vacant field. Graziadei did not know if Rizzo robbed Levine after murdering him. He knew that Levine carried sums of money on his person at all times.

Graziadei stated that after delivering the four ounces of cocaine to Rizzo he and Lauricella left Carlisle and Rizzo at Carlisle's house. He and Lauricella then proceeded to Graziadei's house at which time Graziadei gave lauricella $4,000 which he previously owed to Lauricella and possibly gave him an extra $500.00. Graziadei stated that this money was owed to Lauricella for delivering the four kilos of cocaine to Buffalo purchased with the Levine money.

On the following day Lauricella returned to Florida. Graziadei later found out that Lauricella had apparently told several individuals including LIZ (LNU) described as a tall girl and Peter Cammilleri on the events that occurred and which resulted in Levine's death.

Graziadei stated that after Levine's death he had some contact with Rizzo. On one occasion some time after Levine's murder he gave Rizzo $2,000 or $2,500 to help pay the funeral costs after Rizzo's mother had died.

He recalled that on one occasion Rizzo came to him and told him that Carlisle, JOE LASHAVIO and VICTOR PANARO were planning to order a kilo of cocaine from Graziadei and then refuse to pay him using the murder of Levine as blackmail. Rizzo did not think that this was right and thus warned Graziadei. Graziadei stated that these three individuals did in fact attempt to

purchase a kilo of cocaine on credit but based on Rizzo's warning he, Graziadei would not provide them with this dope.

Graziadei stated that at one point Rizzo became nervous about Lauricella who he viewed as a possible witness against him. Rizzo discussed and was making plans to kill Lauricella, however Graziadei arranged to not carry through on this plan. Rizzo eventually left Buffalo and went to Florida where he currently resides. Graziadei has not had any contact with Rizzo in some time and does not know his specific whereabouts. Graziadei does not know what happened to the gun used by Rizzo in murdering Levine.

Graziadei stated that Lauricella has since returned to the Buffalo area where he currently resides. Since the murder of Levine, Lauricella has held this over Graziadei's head and has obtained a considerable amount of money and/or cocaine based on his knowledge of these events.

APPENDIX E

FEDERAL BUREAU OF INVESTIGATION

Investigation on 8/13-14/92 at Buffalo, New York, File No. 12A-208 by SA Dean G. Naum and SA Joseph R. Coyne.

RUSSELL GUARINO, residing 261 Northeast 38th Street, Apartment D214, Fort Lauderdale, Florida, telephone number (305) 561-3274, was served with a

Federal Grand Jury (FGJ) subpoena, a FGJ at Buffalo, New York, on August 14, 1992. Guarino, who has previously provided statements to the Federal Bureau of Investigation (FBI) concerning his involvement with a narcotics organization involving numerous individuals, including his deceased cousin, MICHAEL BISCOTTO, was informed that a FGJ was now hearing evidence concerning, in part, individuals involved with this narcotics organization. A potential target of this Grand Jury is RONALD CARLISLE, who Guarino was formerly associated with and who has been part of this narcotics ring. Guarino affirmed that he had previously participated in narcotics transactions with Carlisle and which occurred during the approximate period of 1985 and 1986.

Guarino, on the morning of August 14, 1992, was interviewed prior to his appearance before the above described Grand Jury in the office of and in the presence of Assistant United States Attorney (AUSA) ANTHONY BRUCE. He acknowledged that he had been involved in the transportation and distribution of cocaine at the direction of MICHAEL BISCOTTO and other persons associated with Biscotto in the Buffalo area. His narcotics activities were primarily in the Buffalo area as well as in the Scranton, Pennsylvania, area, and which included four trips to New York City for the purpose of purchasing and transporting kilo amounts of cocaine.

He related that on four occasions, at the direction of Biscotto, he had traveled to New York City

for the purpose of purchasing one kilo of cocaine per trip and to deliver that cocaine to Buffalo. On the first two trips he traveled to New York City with FRED CRIMI, and on the last two trips he traveled with Carlisle. On the first three trips he, CRIMI and CARLISLE were successful in purchasing, from a Colombian known to Guarino as "Hutch" or "Jose", a kilo of cocaine. The fourth and last trip that Guarino took to New York accompanied by Carlisle, was not successful as to the purchase of a kilo of cocaine as he and Carlisle were unable to make contact with "Hutch". He recalled that at that time they, referring to he and Carlisle, telephonically contacted Biscotto at Buffalo advising that they were unable to make contact with Hutch. Biscotto, who was upset, instructed them to return to Buffalo stating that Hutch could then deliver the cocaine to Buffalo to complete this transactions.

During this interview, he acknowledged that around October, 1985, he and several other individuals, including BISCOTTO, CARLISLE, GUARINO's girlfriend, PAULINE CALABRESE, and Carlisle's girlfriend, MICHELLE BOURIE, were in a residence in the Wilksbarre/Scranton area which was raided by the State Police. A small amount of drugs were seized at that time as well as a gun that was found in Calabrese's purse. He admitted that this gun belonged to Carlisle who had purchased the weapon in Pennsylvania and who had asked Calabrese to hold it for him in her purse. He witnessed Carlisle giving the gun to Calabrese and after the weapon was seized by the police, had a conversation with Carlisle

who acknowledged that this was his gun. He recalled that Carlisle made a statement that he would try to do something by paying some of the cost that would be incurred by Calabrese as a result of the weapon being seized from her and resulting in her arrest.

He also acknowledged that although there was only a small amount of cocaine seized at the residence, there was a kilo of cocaine that was hidden or stored in Biscotto's vehicle. He believes that this was a Jaguar and recalled Biscotto making a statement after the execution of the search warrant that he could not understand how the kilo of cocaine was not found. He believes that Biscotto brought the kilo of cocaine to Pennsylvania in his Jaguar and recalled that Biscotto traveled to Pennsylvania in the Jaguar accompanied by Carlisle, Calabrese and Marie Guzetta, and who was also present at the residence at the time of the search warrant.

He also recalled a trip that he took to the Miami area at the direction of Biscotto, which was drug related. He believes that this trip took place some time around 1985 or 1986, and that he had flown to Miami from either Buffalo or Rochester. Prior to his departure, Sam Lauricella and Robert Vacanti, who Guarino later learned worked in a narcotics organization of MICHAEL GRAZIADEI, had traveled to Florida to purchase what he believes was five kilos of cocaine. It was his recollection that these five kilos of cocaine were to be purchased on the behalf of BISCOTTO and GRAZIADEI, who were sharing the cost.

Biscotto provided him with a substantial sum of money and directed him to deliver the money to Lauricella and which was to be used for this purchase.

He stated that he did, in fact, upon arrival in South Florida, deliver that money to Lauricella and who did, in fact, purchase what he believes was five kilos of cocaine. Subsequently, he and Vacanti transported these kilos of cocaine back to Buffalo in Vacanti's vehicle. At the time of this incident, he had just met Vacanti shortly before the trip, and met Lauricella for the first time in Florida. At that time Lauricella was residing in Florida with a girl recalled by him as COLLEEN and who he also recalled was employed as waitress at the Fountain Blue Hotel in Miami.

He also believed that Vacanti's car was a Cadillac. He stated in his recollection that these kilos of cocaine were delivered to Biscotto's restaurant, the Chat N' Nibble, located on Sheridan Drive, and stored in the ceiling area of the restaurant. This was the only narcotics related transaction involving he, Vacanti and lauricella to his recollection.

During this interview he also stated that "Hutch", on occasions, would travel to Buffalo for the purpose of collecting money and/or delivering kilo amounts of cocaine. On one occasion, he recalled Hutch and two individuals of apparent Columbian extraction, spent one night at his apartment on Peppertree. He stated that Hutch was in Buffalo at that time to deliver a substantial amount (multi-kilo) of cocaine.

During this interview, Guarino also confirmed that at the time of his arrest in April, 1986, by the FBI, he was in possession of P2P and which he was to deliver to Tony Rizzo and Carlisle. As previously stated, Rizzo and Carlisle made arrangement through him to obtain P2P for the purpose of making "speed". Carlisle and Rizzo were to make a payment of $5,000 to Guarino upon receipt of this product. Guarino was to split the $5,000 with his cousin, MICHAEL BENJAMIN BISCOTTO, of Pittston, Pennsylvania, who had made the arrangements with JIMMY PURCELL to obtain P2P. It is Guarino's understanding that Purcell obtained P2P through a unidentified female. He also recalled after being arrested with the P2P being seized by the FBI, he had a conversation with Carlisle who was made aware of his arrest and the seizure of this product.

At the conclusion of this interview, Guarino appeared before a FGJ and provided testimony.

APPENDIX F

FEDERAL BUREAU OF INVESTIGATION

Investigation on 9/2/93 at Buffalo, New York, File #281A-BF-208 by SA Dean G. Naum

ANTHONY DURANTE residing 15 Evelyn Court, Tonawanda, New York, telephone number (716) 694-9410, was interviewed in relation to his prior narcotics

activities. He thereafter advised as follows:

As previously reported, Durante was employed by h is former Brother-in-law, MICHAEL BISCOTTO (deceased), in a large-scale cocaine organization during the mid-1980s and which concluded with Durante's arrest on narcotics charges in May 1987. During this period, Durante interacted with numerous individuals in direct relation to Biscotto's drug organization. Included among such persons were MICHAEL GRAZIADEI, BILLY KOOPMAN, DILLY SPATARO, CARMAN SPATARO, RUSSELL GUARINO, ANGELO ALFANO, RONNIE CARLISLE, THOMAS VERRASTRO, "HUTCH" (JOSE DECASTRO), and others.

At the outset of the interview, Durante provided a xerox copy of his Citibank MasterCard statement dated October 23, 1986, under account number 5424180067504180. The original of this statement had previously been provided to Special Agent (SA) JESSE MEEKINS of the Buffalo DEA Office. This statement contains motel charges incurred by Durante to trips to Ft. Lauderdale, Florida, in September 1986, and which were narcotic-related. Details concerning this trip had previously been provided to SA Meekins by Durante during a debriefing of Durante subsequent to his arrest in May 1987.

A copy of this statement is attached hereto and which lists charges incurred on September 17, 1986, at BAHIA CABANA, Ft. Lauderdale, and on September 21, 1986, at the SHERWOOD RESORT MOTEL, Ft. Lauderdale, Florida.

Durante stated that this was the second trip to

Florida wherein he and other individuals had travelled from Buffalo for the purpose of purchasing cocaine and/or marijuana on behalf of Biscotto. In the first trip, Biscotto and Graziadei had directed Sam Lauricella and Pete Cammilleri, Carman Spataro and Billy Koopman to travel to Florida to purchase marijuana with a significant amount of cash provided by Graziadei and Biscotto. Biscotto directed Durante to travel to South Florida to meet with these individuals after these four individuals had encountered delays while attempting to consummate the purchase of marijuana. On that occasion, "Hutch" was to be the source of the drugs, however, did not consummate the transaction. Subsequently, these persons returned Buffalo without the marijuana. Durante recalled providing specific details concerning this transaction to SA Meekins during the above-described interview.

Within a short time from this first trip to Florida, Carman Spataro and Koopman again returned to Florida at the direction of Biscotto for the purpose of purchasing a quantity of marijuana through "Hutch". Biscotto also directed Durante to travel to Florida to meet and directly interact with "Hutch" in this transaction. At the time "Hutch" was acquainted and had consummated other narcotics transactions with Durante. But was not familiar with either Koopman and/or Spataro. As a result, Durante left Buffalo accompanied by MIKE FEENEY and FRANK DELICATI, AKA "GERONIMO" (deceased), travelling in GERONIMO's truck.

The plan at that time was for Durante to meet with "Hutch" to make the arrangements for the purchase of marijuana and which would then be transported back to Buffalo in Delicati's truck. During this trip, Durante and his companions checked into the BAHIA CABANA and subsequently left this motel and registered at the SHERWOOD RESORT MOTEL where Spataro and Koopman were registered. During this time, Durante, through a telephone number in Florida as provided by Biscotto, attempted to contact "Hutch", however, was unsuccessful. As a result, this transaction was not consummated and all five of these individuals (DURANTE, FEENEY, DELICATI, SPATARO, and KOOPMAN) flew back to Buffalo via commercial air. Delicati's truck was left in the Ft. Lauderdale area and was later returned to Buffalo by Delicati who flew to Ft. Lauderdale from Buffalo. Delicati was not from the Buffalo area and was from Pennsylvania. The charges on the above-described credit card statement relate to this particular trip.

Durante recalled also using the above Citibank MasterCard while registered at the PAN-AMERICAN MOTOR INN, New York City, in April 1986. This was also a narcotics-related trip wherein Biscotto had directed Durante to travel to New York to meet "Hutch" for the purpose of purchasing quantities of cocaine and which Durante did in fact consummate.

Durante also recalled that Russell Cuarino had also been directed by Biscotto to travel to Florida one or two months prior to the above trips to Florida

by Durante. The purpose of this trip was also to purchase marijuana from "Hutch" on behalf of Graziadei. This transaction was not consummated and he recalled that Guarino had driven to Florida in his 1978 Cadillac that had been purchased from TECH GARAGE. Guarino remained in Florida for approximately one week and then returned to Buffalo without the marijuana.

During this interview, Durante recalled delivering cocaine at the direction of Biscotto to Robert Vacanti. He stated that Biscotto introduced him to Vacanti who was described by Biscotto as one of his (BISCOTTO's) cocaine customers. The initial introduction took place at the CHAT N' NIBBLE and at that time, Biscotto directed Durante to furnish VACANTI with one ounce of cocaine that was fronted. He believes that there may have been a second transaction wherein Durante delivered cocaine to Vacanti, but he could not clearly recall this incident. He stated that he did not receive money from Vacanti for the cocaine and that Biscotto handled this part of the transaction. Based on what Biscotto related to him concerning Vacanti, Durante was of the belief that Vacanti was a dope dealer and not merely a user. At the time of the interview, he could not recall any other narcotic-related transactions with Vacanti and recalled him as a thin individual who worked in the Real Estate or insurance business.

Durante also identified THOMAS VERRASTRO as a regular cocaine customer of Biscotto who was also

dealing cocaine. Durante was introduced to Verrastro by Biscotto at the CHAT N' Nibble. Biscotto informed Durante that Verrastro was a coke dealer who was being provided cocaine by both he and Graziadei. At the time, Biscotto was providing Verrastro quarter and half ounce quantities of cocaine at a few times per week. This cocaine was fronted to Verrastro and Biscotto refused to front him quantities in excess of half ounces. Durante, on at least seven or eight occasions, delivered cocaine to Verrastro at the direction of Biscotto. He noted that during this period of time, which would have been in 1986 and 1987, he along with ALFONO and GUARINO were distributing cocaine on behalf of Biscotto. During this time, each of these persons would work one week and would be off for the following two weeks. It would be his belief that Verrastro was also supplied with cocaine by both ALFONO and GUARINO during the times that Durante was not working in the distribution of cocaine for Biscotto. He also noted that he had previously provided a statement to the FBI concerning plans to murder Verrastro by Biscotto.

In regards to Verrastro, he recalled that Verrastro's girlfriend, CHRIS (KINGSTON), was a heavy user of drugs and on one occasion, which he believes was after Varrastro's arrest on drug charges, Durante delivered cocaine to her on behalf of Verrastro. Again, this cocaine was provided to Durante by Biscotto.

In regards to Ronnie Carlisle, he could not

recall an incident involving Carlisle and Graziadei where a kilo of cocaine was returned to Biscotto in Durante's presence. He has previously provided information concerning Carlisle's involvement in the distribution of drugs on behalf of Biscotto and Graziadei. He stated that he (Durante) did not maintain narcotics records or documents for Carlisle nor did he maintain any narcotics records on a regular basis for Biscotto. He recalled that at the time of his arrest in May 1987 by the AMHERST POLICE DEPARTMENT and other agencies, a telephone directory was seized from him. This directory contained names and telephones numbers of various cocaine customers of Biscotto. Records as such would have been maintained only on loose sheets of paper and would have been discarded on generally a weekly basis. He is not aware as to the current whereabouts of the telephone directory.

During this interview, he also recalled an incident wherein a quantity of cocaine was stolen from his parked vehicle at the CHAT N' NIBBLE. On this occasion,, Biscotto had directed Durante to pick up Graziadei at the Buffalo Airport. At the time, Graziadei was returning from New York City where he had purchased kilo amounts of cocaine from "Hutch". Durante, after picking up Graziadei at the Airport, proceeded directly to the CHAT N' NIBBLE where Biscotto was awaiting their arrival. The cocaine was left inside the car which was unlocked. He noted that the locks were not operable on his vehicle and that

the trunk of the vehicle had water inside it and Graziadei would not leave the cocaine in that area.

At the time of this incident, CHARLIE FALCONE was employed by Biscotto as the Bar Manager. Shortly after his and Graziadei's arrival at the bar, Graziadei went outside to retrieve the cocaine to deliver to Biscotto and determined that it was gone. Initially, Graziadei believed that someone had at random stolen the cocaine and he, accompanied by Durante, for the next few hours, drove throughout the area attempting to locate the cocaine with unsuccessful results. Subsequently, Biscotto informed Durante that he had ripped-off Graziadei of the cocaine.

He is aware that Falcone subsequently received a beating from Biscotto which he (Durante) witnessed at the CHAT N' NIBBLE. He did not believe that this beating pertained to the cocaine stolen from Graziadei. Biscotto had informed him that Falcone had failed to pay for one-half ounce of cocaine and left the area. A few weeks later, Falcone returned to the bar and while at the bar, Biscotto sucker-punched him and proceeded to kick him while on the floor. Falcone was beaten unconscious, however, recovered and refused to go to the hospital. It is Durante's understanding that this incident is not related to the theft of kilo amounts of cocaine from Graziadei. Falcone is believed to currently reside in Ft. Lauderdale, Florida, where his mother resides. Durante could not recall if DINO MIOSI was present at the CHAT N' NIBBLE

when he and Graziadei arrived with the cocaine. He has never participated in any drug deals with either DINO MIOSI or his brother, FRANK.

Durante was familiar with an incident wherein Biscotto, accompanied by Guarino and possibly others, met with JOE TODARO, JR., at the LANOVA PIZZERIA. He was not aware of the purpose of this meeting and did not attend this meeting. He did not have any knowledge that Biscotto and his companion proceeded to the meeting armed with hand guns or that subsequent to this meeting that Biscotto had been summoned to meet with JOSEPH TODARO, SR. He could not provide any information concerning this incident.

Durante stated that he is available for additional interviews if so requested.

APPENDIX G

FEDERAL BUREAU OF INVESTIGATION

Part of investigation on 4/12/92 at Buffalo, New York, File #281A-BF-208 by SA Dean G. Naum on SALVATORE ANGELO LAURICELLA.

Three or four days after Durante departed Florida to return to Buffalo, Koopman and Spataro returned to Buffalo by commercial air. Lauricella drove them to either the airport at Fort Lauderdale or Miami and they returned to Buffalo with whatever cash was left over that had been provided to them by Biscotto.

After Koopman and Spataro left Florida,

Lauricella initiated and completed a two to four kilo cocaine deal through PEREZ. Lauricella had been instructed by GRAZIADEI to purchase kilo amounts of cocaine using the cash that had been previously provided by Graziadei. He recalled that Perez completed this transaction and he Lauricella and Cammilleri transported the cocaine back to Buffalo by hiding the cocaine in the quarter panels of the above described Buick. He stated that they drove directly back to Buffalo and proceeded to his sister NANCY's house. The cocaine was left in the car, however, Lauricella would usually drop the car with the cocaine at the holding lot at TECH GARAGE owed by GRAZIADEI's father. Graziadei would normally let the car sit in this spot with the cocaine for several days before he retrieved it. He recalled that he contacted Graziadei upon his return to Buffalo and delivered the cocaine to Graziadei. He did not know to whom Graziadei distributed the cocaine.

He stated that he received from Graziadei $1,500 per kilo that was transported by him to Buffalo plus his expenses. He recalled that "they" blew several thousand dollars while in Florida. He stated that Cammilleri did not receive any money from Graziadei, however, all of his expenses to include partying were paid by monies provided by Graziadei.

Lauricella described another narcotics incident involving FRANK MARROCCO. He believes that this incident occurred around 1987 or 1988 and that during this period of time, Morrocco was then residing in

Florida. At the time Morrocco was aware of the narcotics relationship between Graziadei and Lauricella and resented or was jealous of this relationship. Morrocco was upset that Lauricella was making a considerable amount of money from this relationship. As a result, Morrocco contacted Graziadei advising that he, Morrocco, had a source who could provide kilo amounts of cocaine for a low price of $10,000 ot $11,000 per kilo.

Lauricella later learned through conversations with both Morrocco and Graziadei that Graziadei agreed to provide Morrocco with enough money to purchase three kilos of cocaine from Morrocco's source in Florida. Morrocco thereafter returned to Florida from Buffalo taking with him Graziadei's money. After a period of time it became obvious to Graziadei that Morrocco was having difficulties in purchasing these kilos of cocaine. Lauricella later determined or deducted that Morrocco had run a scam on Graziadei and was using this money to pay off his bills and party. Morrocco was shopping to purchase cocaine with money provided by Graziadei. Lauricella learned during this incident that Morrocco was successful in purchasing only one kilo of cocaine.

After a period of time, when Morrocco could obviously not produce, Lauricella and Babe Novino were sent by Graziadei to Florida to confront Morrocco. Graziadei told them to get his money back from Morrocco and instructed Lauricella and Novino to slap Morrocco around. Graziadei also told them to pick up

whatever dope that Morrocco had purchased.

He believes that he and Novino flew to Florida from Buffalo and proceeded to Morrocco's house in West Palm Beach, Florida. He stated that KAREN MC GUIRE, with whom Morrocco resided, was at the residence when he and Novino arrived. He recalled that Morrocco was "all screwed up" and had been freebasing, using the money provided by Graziadei. At the time, Lauricella grabbed Morrocco, shoved him and threatened him. At this point, Novino grabbed Morrocco by the hair and slapped him several times. He and Novino then retrieved from Morrocco what was left of Graziadei's money and which Lauricella believed was around $10,000 or so.

Lauricella stated that he stayed a day or so while Novino flew back to Buffalo. Morrocco had hidden a kilo of cocaine which he had sampled. Morrocco then went out to purchase another kilo of cocaine, however, returned with five pounds of marijuana. Lauricella then called Graziadei and was instructed to return to Buffalo with the money and have Morrocco drive the dope back to Buffalo. lauricella stated that he flew back to Buffalo and recalls being delayed at the Newark Airport with airplane trouble. He recalled that this occurred during the cold months of the year. He also recalled that Graziadei and Novino picked him up at Lauricella's apartment, at which time he gave Graziadei the money that he had retrieved from Morrocco. He also explained to Graziadei what had

happened with Morrocco in Florida.

A few days later, Morrocco arrived in Buffalo. Graziadei thereafter called Lauricella and had Lauricella come to his house. They proceeded into the garage and Graziadei displayed the drugs brought to Buffalo by Morrocco. He recalled that there were several "big hits" out of the package of cocaine. They then weighed the package and determined that the kilo of cocaine was several ounces short. Lauricella also recalled that Novino was present during this time.

Graziadei then displayed the marijuana purchased by Morrocco in Florida and described it as "garbage." Lauricella did not know what Graziadei eventually did with the marijuana. He also did not know how the cocaine was disposed of but recalls that Morrocco, when he returned to Buffalo, went to his grandfather's house in Lackawanna and where he maintained the dope until he delivered it to Graziadei.

While in Florida, Lauricella established another kilo source of cocaine with LAURIE (LNU). He stated that he met Laurie in late 1985 or 1986 through KATHY GUGINO, a Buffalo coke dealer.

He recalled that Graziadei called him in Florida advising that Gugino was coming to Florida with money to be used in the purchase of cocaine through Lauricella. RUSS TIRONE, who routinely transported kilos of cocaine for Graziadei, was in Florida and was to deliver the cocaine purchased at that time back to Buffalo. Graziadei explained that Gugino would

introduce Lauricella to a person who would provide them with cocaine.

He stated that he and Tirone picked up Gugino at the Miami Airport and at the time she had money stuffed all over her person. He believes that she was carrying around $30,000 in cash and he also believes that Tirone had some money with him. Graziadei had also told Gugino that lauricella would make the deal for the dope.

He stated that there was an incident involving Tirone who was staying with Gugino at the Marco Polo Hotel in Miami